(3)

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH

Writ Petition No. 2088 of 2006

PETITIONER:

Pradhan Ram, S/o Jagtu Ram,
Aged about 37 years,
Caste: Uraon, Sarpanch,
Gram Panchayat: Jamargi Bi,
R/o Village: Jamargi Bi,
Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

P.R. No. 2137/06
Presented by Sri Sanjukta Sharma
dated 19/4/06

- Versus -

RESPONDENTS:

1. Bhagwati Singh, S/o Dhiraj Singh,
Aged about 52 years,
Caste: Kanwar,
R/o Village: Jamargi Bi,
Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

RECEIVED-COPY
19/4/06
CLERK to A. G. BILASPUR

2. Hiran Sai, S/o Negi Ram,
Caste: Uraon,
R/o Village: Jamargi Bi,
Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

3. Devendra, S/o Aditya Singh,
Caste: Kanwar,
R/o Village: Jamargi Bi,
Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

4. Election Officer, Pathalgaon,
Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

5. Sub Divisional Officer-cum-
Specified Officer under the
Chhattisgarh Panchayat Raj Avam
Gram Swaraj Adhiniyam, 1993,
Pathalgaon, Tehsil: Pathalgaon,
District: Jashpur, Chhattisgarh.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, DIRECTIONS ETC., IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ANY OTHER SUITABLE WRIT OF LIKE NATURE.

The petitioner, above named, most respectfully begs to submit as under: -

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

आदेश पत्रक

मामला क्रमांक WPC No. 2088 / 06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11-7-2006:- Shri Sanjay K. Agrawal with Shri Sourabh Sharma, counsel for the petitioner. Shri Sanjay S. Agrawal, counsel for respondent No.1. None for respondents No.2 and 3. Shri Satish Gupta, Deputy Govt. Advocate for respondents No.4 and 5. By this writ petition, the petitioner has questioned legality, validity and correctness of the impugned order dated 7-4-2006 passed by the Specified Officer, Paththalgaon whereby Specified Officer after allowing election petition of respondent No.1 herein held the election of the petitioner to be void on the ground that the petitioner herein has more than two living children one of whom i.e. 5th child was born on or after 26th January 2001 and simultaneously, while holding the election of the petitioner as void, declared respondent No.1 as duly elected Sarpanch. Brief facts leading to filing of this writ petition are that election for the post of Sarpanch of Gram Panchayat Jamargi Bi was held on 29.1.2005 and in that election, the petitioner herein and respondents No.1, 2 & 3 i.e. four persons contested election. At the end, the petitioner herein was declared as elected with a margin of 26 votes and the nearest defeated candidate was respondent No.1 who filed election petition. Thereafter, respondent No.1 herein, the nearest defeated candidate, challenged election of the petitioner herein under Section 122 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 (hereinafter referred to as "the Rules, 1995") questioning the election of the petitioner. Notice of the	

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

९ (क)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

same was sent to the petitioner herein and reply was filed by the petitioner herein.

In para-3 of the petition, respondent No.1 mentioned that the petitioner herein was Sarpanch of Gram Panchayat Jamargi Bi in the earlier term and on account of having more than two children the S.D.O. made a report to the Collector on 15.1.2002 for dismissal of the petitioner herein, but due to notification of the new election, the file was consigned to the record. In para-3 of the reply filed by the petitioner herein, it is mentioned that 5th child was born on 15.1.2001, the earlier complaint was false and no finding was recorded by the Collector.

Learned Specified Officer on receiving the petition on 25.2.2005 issued notice for 14th March 2005 on which date the petitioner herein was present and he filed reply. Learned Specified Officer summoned for the births and deaths register from the Kotwar and Aangan Badi Karyakarta and fixed the matter for 28.3.2005, on that day, Specified Officer was on tour and the matter was fixed for 4.4.2005, on that day, birth register of Kotwar and Aangan Badi Karyakarta was produced before the Court, the matter was adjourned for 25.4.2005.

On 25.4.2005, advocates for the parties asked for time to produce documents and the matter was adjourned for 27.5.2005. On 27.5.2005, learned Specified Officer recorded that advocates for the parties want to argue the matter and the matter was adjourned for 30.5.2005 and on that day learned counsel for the parties wanted time to argue on application and the matter was adjourned for 13.6.2005. On 13.6.2005, copy of the show cause notice issued by the Collector was filed and the matter was fixed for arguments on 27.6.2005 and on that day, it was ordered that in order to ascertain as to on what basis the Station House Officer, PS

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bagbahar has given birth certificate, report be called for and the Kotwar should remain present with original births and deaths register. The matter was adjourned to 8.7.2005 and on that day, the matter was adjourned for 25.7.2005. On 27.7.2005, attested copies of the births and deaths certificate were produced by the Kotwar, report of the S.H.O. was called for and the matter was adjourned for 12.8.2005. Again it was adjourned to 29.8.2005 and on that day, oral arguments of learned counsel for the parties were heard and the matter was fixed for orders on 19.9.2005, on that day, the matter was again adjourned for 26.9.2005.

On 17.2.2006, learned Specified Officer ordered that after perusal of the record in order to record correct finding, evidence is necessary, therefore, invoking inherent power he summoned village Kotwar, Aangan Badi Karyakarta and S.H.O., PS Bagbahar along with original record. It was also ordered that if the petitioner or respondents want to file any oral or documentary evidence, they are entitled to produce and the matter was adjourned to 10.3.2006. On 10.3.2006, evidence of Kotwar and Aangan Badi Karyakarta was recorded. It was further ordered that evidence of Kotwar and Aangan Badi Karyakarta is taken and there is no need to record evidence of S.H.O., arguments have also been heard, therefore, the matter was fixed for orders on 24.3.2006, on that day, officer was not there, therefore, the matter was adjourned for 27.3.2006. Again on that day order could not be passed and the matter was adjourned for 3.4.2006, on that day, the matter was again adjourned and ultimately, the impugned order was passed on 7.4.2006.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submitted that learned Specified Officer had not given opportunity to the petitioner to adduce evidence.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(89)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Even statement of the petitioner was not recorded. The procedure as envisaged in Rules 11 and 12 of the Rules, 1995 has not been followed, therefore, the whole proceeding stands vitiated.

On the other hand, learned counsel for respondent No.1 i.e. the petitioner in the election petition argued that it is evident from the proceeding dated 17.2.2006 that the parties were given opportunity to adduce evidence. Rule 12 of the Rules, 1995, in particular, cast duty on the parties to produce their witnesses on the date fixed for evidence. Therefore, the petitioner could have produced his witnesses which was not produced by the petitioner himself, therefore, he was not entitled to produce witness.

In order to appreciate the arguments advanced by learned counsel for the parties, it would be beneficial to have glance over the Rules11 and 12 of the Rules, 1995. Rule 11 contemplates that:-

> "Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:
>
> Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him."

Rule 12 contemplates that:-

> "It shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses:

(पीछे देखिये)

(90)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Provided that the specified officer may, at his discretion, order the issue of summons to any witness on the necessary process fee and costs being deposited by the party concerned."

Perusal of the above rules shows that as soon as pleadings of the parties were complete, learned specified officer was duty bound to have asked the parties that if they want to adduce evidence, they are at liberty to adduce evidence which was not done by the specified officer which is evident from the proceeding referred hereinabove. In the first instance, he fixed the matter for arguments and arguments of learned counsel for the parties were heard and the matter was fixed for orders, thereafter, all of a sudden, on 17.2.2006, when the matter was fixed for orders, he recorded that in order to ascertain correctness in proper manner it will be legal and justified to record evidence and he summoned Kotwar and Aangan Badi Karyakarta as well as S.H.O. P.S. Bagbahar with records. Therefore, in the first instance itself, learned specified officer did not follow the mandate of the Rule 11 of the Rules, 1995, particularly, when he was duty bound to give opportunity to the parties to adduce evidence, particularly, when there was specific denial of the petitioner herein in reply of the election petition in para-3 that his 5th child was born on 15-1-2001 i.e. 11 days before the notified date i.e. 26.1.2001.

Moreover, there was no specific pleading of respondent No.1 that the wife of the respondent i.e. the petitioner herein gave birth to 5th child on or after 26th January 2001. In para-3, it is simply mentioned that some case was recommended by the prescribed authority for disqualification of the petitioner herein on account of birth of 5th child, but enquiry was not concluded and no final finding was given, therefore, in order to hold election void on that ground respondent No.1 ought to have made a

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(91)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

specific pleading regarding the fact that 5th child was born on or after 26.1.2001.

Now, coming to the arguments advanced by learned counsel for respondent No.1 that once learned specified officer ordered on 17.2.2006 that if the parties wish, they can produce oral and documentary evidence, it was the duty of the petitioner herein to adduce evidence.

It is true that opportunity was given to the parties vide order dated 17.2.2006 but in the first instance, the opportunity ought to have been given at the time of beginning before the matter was heard and fixed for orders. Particularly, proceeding dated 10.3.2006 shows that after recording evidence of Kotwar and Aangan Badi Karyakarta, even the evidence of S.H.O. was not recorded by the specified officer mentioning that evidence of Kotwar and Aangan Badi Karyakarta is sufficient. This proceeding dated 10.3.2006 does not show that whether SDO asked the parties whether they want to adduce evidence or not. He has not recorded that parties do not want to adduce evidence, as such no inference can be drawn that the petitioner was not interested to adduce evidence. When the petitioner in para-3 of the reply has specifically mentioned that 5th child was born on 15.1.2001, it was the duty of the specified officer to have asked the petitioner herein to adduce evidence and if the petitioner failed to adduce evidence, he could have closed the evidence. There is no mention in the proceeding dated 10.3.2006 that the petitioner either failed to adduce evidence or he expressed that he does not want to adduce evidence. The proceeding is silent on this aspect, as such argument of learned counsel for respondent No.1 that the petitioner is not entitled to adduce evidence is not based on sound reasoning, therefore, I am of the considered opinion that learned specified

(पीछे देखिये)

92

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

officer has failed to comply with the provisions of Rules 11 and 12 of the Rules, 1995, as such whole proceeding stands vitiated.

As far as declaring respondent No.1 as elected is concerned, there is no pleading and finding in consonance with Rule 23 of the Rules, 1995. Learned specified officer ought to have read Rule 23 before declaring respondent No.1 as elected on the post of Sarpanch. Rule 23 (2) envisages that:-

> "If any person who has filed an election petition has in addition to calling in question the election of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected and the specified officer is of opinion –
> (a) that in fact the petitioner or such other candidate received a majority of valid votes, or
> (b) that but for the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of valid votes;
> the specified officer shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected."

There is no finding on these two points by the specified officer that the petitioner or such other candidate received a majority of valid votes or the petitioner or such other candidate would have obtained a majority of valid votes. There were 4 candidates in the election, therefore, it was necessary for the specified officer to have recorded finding in terms of Rule 23(2)(b) that but for the votes obtained by the petitioner herein, respondent No.1 would have obtained a majority of valid votes. No such finding in there, therefore, declaring respondent No.1 as elected, finding

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

93

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	of learned specified officer is not in consonance with Rule 23 of the Rules, 1995. In the result, the impugned order dated 7.4.2006 is set aside. The matter is remitted back to learned specified officer to hold trial of the election petition in consonance with the Rules, 1995 as referred above and to decide the petition on its own merit after recording evidence of the parties and hearing the arguments. As the election was held in the year 2005 since then more than one year 6 months' time has elapsed, therefore, it is expected that the specified officer to expedite the proceeding and decide the election petition at the earliest. Parties are entitled for certified copy of this order. Sd/- L.C. Bhadoo Judge	

Barve

(पीछे देखिये)